

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Charter Art. IV, Relating to : Request Received October 27, 2010
the Managing Director :
:
: Advisory Opinion No. 22

ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTION PRESENTED

By letter dated October 21, 2010 the Solicitor of the City of Reading, Charles D. Younger, Esquire, (“Solicitor”) requested that the City of Reading Charter Board (“Board”) issue an advisory opinion regarding Charter, Art. IV, relating to the appointment of the Managing Director.¹ The Solicitor presents four questions to the Board:

1. “Upon a vacancy in the Managing Director’s position, what is the maximum period of appointment for a Temporary Managing Director by the Mayor?;”
2. “Since Article IV Section 401(a) refers to an appointment for an indefinite term with council approval and Section 401(d) refers to an appointment not to exceed 90 days without mentioning council approval, does the Mayor’s appointment of a Temporary Managing Director require council approval?;”
3. “Does the appointment of a Temporary Managing Director by the Mayor constitute ‘filing the position’ of Managing Director and thereby preclude City Council hiring pursuant to Section 401(e)?;” and
4. “Should no appointment of a Managing Director to an indefinite term occur within 270 days pursuant to HRC Article IV Sections 401(a-e), does appointment authority revert to the Mayor under HRC Article III and HRC Article VI or do HRC Article IV procedure provisions begin *ab initio*?”

The Board answers these questions as set out below.

¹ By Advisory Opinion dated November 9, 2010 the Board answered a question posed by City Council President Vaughn Spencer as to whether the time limits set forth in Charter § 401(a), (d) and (e) apply where the position of Managing Director becomes vacant. The Board answered that question in the affirmative. See Advisory Opinion No. 21 (Nov. 9, 2010).

II. DISCUSSION AND ANALYSIS

A. Pertinent Charter Provisions

The focus of this advisory opinion is Article IV of the Charter which addresses the Managing Director. Specifically at issue in answering the four questions posed by the Solicitor are Charter § 401(a), (d) and (e) which relate to the timing of the appointment of the Managing Director and who, the Mayor or City Council, shall make those appointments. Section 401(a) provides that “[w]ithin ninety (90) days of taking office, the Mayor . . . shall appoint a Managing Director” Section 401(d) provides that if the Mayor cannot fill the position of Managing Director, then the “Mayor may appoint a Temporary Managing Director for a period of time not to exceed ninety (90) days.” Finally, Section 401(e) provides that if the Mayor “has not filled the position of Managing Director within one hundred eighty (180) days of taking office, City Council shall, within ninety (90) days thereafter, hire a Managing Director.”

Charter § 403 provides that if “the position of Managing Director becomes vacant at any time, the provisions of Section 401 shall apply to the hiring of a replacement.”

B. Analysis

The Solicitor’s first question is answered simply by the clear and unambiguous language of Charter § 401(d). Section 401(d) states that the appointment of a Temporary Managing Director may not exceed 90 days. Section 403, pertaining to a vacancy in the position of Managing Director, clearly provides that in the case of such a vacancy “the provisions of Section 401 shall apply to the hiring of a replacement” Managing Director. Thus, where a vacancy of that position exists, the 90 day limitation on the term of a

Temporary Managing Director stated in Section 401(d) continues to apply under Section 403.

There is some attraction to answering this question such that the maximum term of a Temporary Managing Director would calculate to 180 days² or 270 days.³ Such an answer invites a common sense approach, for surely the City and its citizens benefit when a managing director (temporary or permanent) is appointed and serving. The 90 day limitation on the appointment of a Temporary Managing Director seems certainly short when matched to a potential time frame of up to 270 days until City Council acts to hire a Managing Director under Section 401(e). Of course, there are factors militating against even a common sense approach to the length of the appointment of the Temporary Managing Director. The position of Managing Director is important, it is critical, and it is intended by the Charter that the hiring of the Managing Director be dealt with as high priority by the incoming Mayor and upon a vacancy.⁴

However, the Board must cast aside considerations beyond the clear language of the Charter,⁵ as the Board is properly constrained by the very clear language of Charter § 401(d). The general rules of statutory construction are applicable in interpreting provisions of a home rule charter. *City Council of the City of Reading v. Eppihimer*, 835 A.2d 883, 887 (Pa. Commw. Ct. 2003). When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing

² A 180 day period could be comprised of the initial 90 day period under Section 401(a) and the second 90 day period under Section 401(d).

³ A 270 day period could be comprised of the 180 day period calculated under footnote 2 plus the additional 90 day period in which City Council shall hire a Managing Director under Section 401(e).

⁴ See Section 401(d) (stating that “[d]uring this period of time, the Mayor shall continue to use all available means to fill the position.”) (emphasis added).

⁵ Charter Amendment I, Section 1, provides that “[t]he wording of the Charter, and acts pursuant to it, shall in all cases be strictly construed so as to effectuate its clear intent.” Further, the Charter Board Ordinance § IV(A)(2) provides that “[w]hen the words of a Charter provision are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”

its spirit. 1 Pa.C.S. § 1921(b). Further, Charter provisions are in *pari materia* when they relate to the same persons or things or to the same class of persons or things. Statutes in *pari materia* shall be construed together, if possible, as one statute. 1 Pa.C.S. § 1932.

The time limitations and appointment powers of Section 401(a) and 401(d) must be read in *pari materia*. Importantly, the clear language of Section 401(d) does not empower the Mayor to appoint a Temporary Managing Director until the Mayor cannot fill the position of Managing Director under Section 401(a) and Section 401(a) provides that during the first 90 days of taking office the Mayor “shall appoint a Managing Director.” Section 401(a) is silent regarding an appointment of a Temporary Managing Director during the first 90 days of a Mayor’s term.

Therefore, without any hesitation, the Charter clearly provides that the appointment of the Temporary Managing Director shall not exceed 90 days. Charter § 401(d). The time line mandated by the Charter is strict. Within 90 days of taking office the Mayor shall appoint a Managing Director. Charter § 401(a). After that first 90 day period, if the Mayor is unsuccessful in making that appointment, the Mayor may then appoint a Temporary Managing Director “for a period of time not to exceed ninety (90) days.” Charter § 401(d). In the event that the position of Managing Director is not filled by the Mayor within 180 days, City Council must hire a Managing Director within 90 days thereafter. Charter § 401(e). Thus, the Charter mandates a maximum period of time of 270 days until a Managing Director must be hired or a vacancy in the position of Managing Director must be filled under Section 403.

This strict, inflexible time frame obviously contemplates that for a period of a minimum of 180 days up to a maximum of 270 days, the City could be without any

managing director, temporary or permanent. The Board is cognizant of the importance of the position of Managing Director and the essential role that person fills in the day to day operations of the City. However, the Board cannot legislate, it cannot interpose language into the Charter that is not there, and it cannot amend the Charter. The citizens of Reading or City Council may move to amend the Charter if they feel temporary professional management is desirable for a period of longer than 90 days during the process addressed by Sections 401 and 403.

The Solicitor's second question is answered in the negative: City Council approval is not needed for the Mayor to appoint a Temporary Managing Director appointed in accordance with Article IV of the Charter or, specifically, Section 401(d). Additionally, the Board's opinion is that the indefinite term contemplated by Section 401(a) does not apply to a Temporary Managing Director. The length of the appointment of a Temporary Managing Director is limited to 90 days. Charter § 401(d).

The Solicitor's third question is also answered in the negative. The appointment of a Temporary Managing Director does not constitute "filling the position" of Managing Director and City Council is not precluded from proceeding under Section 401(e) to hire a Managing Director, even when a Temporary Managing Director is appointed. The Managing Director's appointment is contemplated by Section 401(a). A separate appointment of a Temporary Managing Director is contemplated by Section 401(d), only "in the event that the position of Managing Director cannot be filled by the Mayor." Of course, there is no prohibition on elevating the person serving as Temporary Managing Director to the position of Managing Director for an indefinite term so long as that person meets all requirements for Managing Director and is approved by City Council. A

Temporary Managing Director appointed under Section 401(d) is limited to a 90 day term, and thereafter, after 180 days from the Mayor taking office, City Council shall then exercise its power under Section 401(e) to hire a Managing Director. All of the aforementioned likewise applies in the event of a vacancy. Charter § 403.

The Solicitor's fourth question is again answered under the very clear language and equally clear linear framework established by Charter Article IV. It is mandatory that by not later than 270 days after the Mayor takes office, or of the existence of a vacancy, the Managing Director shall be appointed. The 270 day period is calculated by adding the 180 days stated in Section 401(e)⁶ and the 90 additional days in which City Council must make the appointment, as also stated in that section. The language of the Charter is not optional; it is directory. *See* Charter § 401(e) ("City Council shall . . . hire a Managing Director.") (emphasis added) *and* Advisory Opinion No. 21 (Nov. 9, 2010).

Further, there is no Charter provision allowing the authority to appoint the Managing Director to revert from City Council to the Mayor after the 270 day period has expired without appointment by City Council. There can be no such implicit reversion of this authority to the Mayor. As the Charter provides at Amendment I, Section 1, the Charter is the "governing law of the City of Reading . . . and no action or inaction by City Council, the Administration, or any other body created by this Charter shall be taken contrary to it, whether individually or collectively, by ordinance, resolution, practice, executive order or decision, or any other means." Likewise, the Mayor's opportunity to appoint the Managing Director or Temporary Managing Director ends after the expiration of 180 days from either taking office or from the existence of a vacancy. Charter §§

⁶ During these 180 days, the power to appoint the Managing Director rests with the Mayor. *See* Charter § 401(a), (d).

401(a),(d), (e) *and* 403. The Charter does not provide for the process to begin anew *ab initio* if City Council fails to make the mandatory hiring of a Managing Director between days 181 and 270. Charter § 401(e).

Failure to comply with these absolutely mandatory provisions would place the offending person, officeholder or body in violation of the Charter. Charter violations are addressed by complaint filed with the Board. Charter, Amd. I, § 2(a); Charter Board Ordinance §§ III(A)(1), V(A)(1).

III. OPINION OF THE BOARD

The Opinion of the Board is that:

- a. the maximum period of the appointment of a Temporary Managing Director is 90 days;
- b. the appointment of a Temporary Managing Director by the Mayor does not require approval by City Council;
- c. the appointment by the Mayor of a Temporary Managing Director does not constitute “filling the position” of Managing Director, nor does it preclude City Council from hiring a Managing Director pursuant to Charter Section 401(e);
- d. if the Mayor does not appoint a Managing Director within 180 days of taking office or of the existence of a vacancy, the Mayor loses, and City Council gains, the power to appoint the Managing Director and such power does not revert from City Council back to the Mayor after expiration of the 270 days provided for under Charter Section 401(e), nor in such case does the process begin anew *ab initio* under Section 401(a).

CITY OF READING CHARTER BOARD

By: 
Susan Gibson, Chair

Date: November 18, 2010